FOR COURT USE ONLY
BANKRUPTCY COURT A - SAN FERNANDO VALLEY DIVISION
CASE NO.: 1:18-bk-11009-MB
CHAPTER: 11
NOTICE OF SALE OF ESTATE PROPERTY
<b>Time:</b> 10:00 am
and Hills, CA 91367
to file objections: October 16, 2017  Debtor's assets, as set forth in Section 2.1 of the draft Asset eto as Exhibit B.
Under the Stalking Horse APA, Purchaser has agreed to as the "Purchased Assets" (see Section 2.1 of the Stalking h consists of a combination of debt assumption, a credit bid

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

Overbid procedure (if any): See proposed bid procedures attached hereto as Exhibit A.			

#### If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Date: June 26, 2018
Time: 1:30 p.m.
Place: United States Bankruptcy Court, Central District of California
Courtroom "303"
21041 Burbank Blvd.
Woodland Hills, California 91367

# Contact person for potential bidders (include name, address, telephone, fax and/or email address):

Ryan Small
Sherwood Partners, Inc.
1801 Century Park East, 25th floor
Los Angeles, CA 90067
Tele: (310) 997-2336
Fax: (310) 997-2336
Email: Rsmall@shrwood.com

Date: 10/09/2017

# **EXHIBIT "A"**

# **EXHIBIT A TO 6004 Notice**

# **Proposed Bidding Procedures:**

Any party interested in submitting an overbid for the Purchased Assets ("Overbid") must, not later than 4:00 p.m. (Pacific time) on Wednesday, June 20, 2018 (the "Overbid Deadline"), deliver such Overbid in writing to counsel for the Debtor (Lindsey L. Smith, Esq., Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, California 90067, Email: LLS@LNBYB.com, Facsimile (310) 229-1244), in accordance with the requirements set forth below:

- i. The purchase price for the Purchased Assets in any Overbid must be in a sum that is at least \$150,000 above the amount of the total consideration (cash and debt assumption) to be provided by the Stalking Horse under the Stalking Horse APA, which total consideration is \$1,290,000. No Overbids that are contingent as to financing or that purport to assume the Pre-Petition Secured Debt shall be considered, unless, in the sole and absolute discretion of holders of the Debtor's pre-petition secured debt (the "Pre-Petition Secured Debt"), such qualified bidder is an acceptable creditworthy party whom the holders of the Pre-Petition Secured Debt allows in writing to assume the obligations under the Pre-Petition Secured Debt under mutually agreeable terms;
- ii. Each party submitting an Overbid must, by the Overbid Deadline: (x) deliver a signed copy of the APA (or revised version thereof, with a redline comparing the revised APA to the Stalking Horse APA attached hereto as Exhibit B), (y) deliver a deposit in a sum equal to twenty percent (20%) of the total cash consideration proposed to be paid pursuant to the Overbid (the "Deposit"), in the form of a cashier's check made payable to LNBYB on behalf of the Debtor or a wire transfer payment to a client trust account

designated by LNBYB, so that such Deposit is actually received by LNBYB by the Overbid Deadline (which Deposit will be deemed non-refundable in the event the respective overbidder is deemed by the Court at the Auction to be the winning bidder), and (z) deliver to LNBYB proof of committed funds available to the prospective overbidder sufficient to enable such prospective overbidder to consummate the sale of the Purchased Assets, which proof shall be in the form of a bank account statement, letter of credit, loan commitment or other form acceptable to the Debtor in the Debtor's reasonable discretion (with advice and input from the Debtor's sales agenet, Sherwood). In the event that the prospective overbidder fails to make the Deposit timely or timely provide proof of committed funds, or the Debtor determines, in its reasonable discretion, that the proof of funds delivered to LNBYB is unacceptable (with advice and input from Sherwood), the Debtor may disqualify such bidder from participating in the Auction. In the event that the Debtor exercises its reasonable discretion and disqualifies a prospective overbidder from participating in the Auction, the Deposit made by such prospective overbidder (if any) shall be promptly returned to the prospective overbidder. The Stalking Horse shall be deemed to be a qualified bidder for the Auction.

b. *Bidding At Auction*. If at least one qualified prospective overbidder who has submitted an Overbid appears at the Auction, the Debtor and LNBYB (with the assistance from Sherwood) shall conduct the Auction in the Bankruptcy Court with the assistance of the Bankruptcy Court. Bidding increments at the Auction shall be in a minimum amount of \$50,000 of figures which are wholly divisible by \$50,000. The Auction shall continue until the best and highest bid(s) for the Purchased Assets has been determined by the Debtor and LNBYB (with input from Sherwood) and

- approved by the Court. As set forth in the Stalking Horse APA, the Stalking Horse shall have the right to participate in the Auction if the Stalking Horse so desires.
- **Backup Bidder.** In the event that there is at least one qualified overbidder at the Auction, the qualified bidder who submits the second best/highest bid for the Purchased Assets at the Auction shall be designated as the backup bidder. In the event that the successful bidder for the Purchased Assets cannot timely complete its purchase of the Purchased Assets, the Debtor shall proceed with the sale of the Purchased Assets to the backup bidder without further notice, hearing or order of the Court.
- d. Closing Of Sale And Forfeiture Of Deposits. The winning bidder shall have until the first business day that is five (5) days after the date of entry of a Court order approving the sale of the Purchased Assets (the "Sale Order") to consummate its purchase of the Purchased Assets. If the winning bidder fails to do so, the winning bidder will be deemed to have forfeited his/her/its Deposit unless the Court or the Debtor agrees to provide the winning bidder with an extension of time to close the sale. If the winning bidder fails to close and forfeits his/her/its Deposit, the backup bidder will be notified and will then have until the first business day that is five (5) days after the date of such notification to close his/her/its purchase of the Purchased Assets or will be deemed to have forfeited his/her/its Deposit unless the Court or the Debtor agrees to provide such backup bidder with an extension of time to close the sale. The Deposit of the backup bidder will be retained by LNBYB following the conclusion of the Auction and will be returned to the backup bidder upon the closing by the winning bidder of his/her/its purchase of the Purchased Assets unless the backup bidder has forfeited his/her/its Deposit pursuant to the terms and conditions set forth in the APA.
- **Breakup Fee.** In the event a qualified bidder other than the Stalking Horse is the successful bidder at the Auction, the Stalking Horse will be paid (i) a breakup fee in

the amount of \$55,000 (the "Breakup Fee"), paid directly to the Stalking Horse at the Closing from the proceeds of the sale to the successful overbidder and (ii) an expense reimbursement in an amount equal to the Stalking Horse's out-of-pocket costs, fees and expenses (including reasonably legal, financial advisory, accounting and other similar costs, fees and expenses) incurred by the Stalking Horse in connection with the negotiation, documentation and implementation of the Stalking Horse APA and sale. The Stalking Horse shall be entitled to a credit for the full amount of the Breakup Fee in any overbid it may elect to tender at the Auction.

f. **Sale Hearing:** the hearing on the approval of the sale of the Purchased Assets to the winning bidder at the Auction shall be held on June 26, 2018, at 1:30 p.m., immediately following the conclusion of the Auction in the Court. If there is no overbid submitted to the Stalking Horse APA and therefore no Auction, the Debtor will proceed with the sale hearing on June 26, 2018, at 1:30 p.m., at which the Debtor will seek Court approval of the Debtor's sale of the Purchased Assets to the Stalking Horse in accordance with the terms of the Stalking Horse APA.

# **EXHIBIT "B"**

ASSET PURCHASE AGREEMENT

BY AND AMONG

HEMOLIFE MEDICAL, INC. ("SELLER")

AND

CLARRENCE AG ("PURCHASER")

DATED: June \_\_\_, 2018

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#### ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made and entered into this \_\_ day of June, 2018, by and among HEMOLIFE MEDICAL, INC., a California limited liability company ("Seller"), and CLARRENCE AG, a company formed under the laws of Switzerland ("Purchaser"), with reference to the following, with Seller and Purchaser collectively referred to herein as the "Parties" and each individually referred to as a "Party":

WHEREAS, Seller is an early-stage therapeutic medical device company engaged in the development and commercialization of innovative and proprietary blood and plasma filtration technologies (the "Business"). Seller's lead product is a disposable system called the IMPACT System which focuses on the adsorptive removal of blood-borne toxins and over-expressed metabolic activators associated with various pathological states. Seller's primary asset is its U.S. patent that relates to its IMPACT System and that is referred to herein as the "System Patent"; and

WHEREAS, on April 23, 2018 (the "Petition Date"), Seller commenced its Chapter 11 bankruptcy case (the "Bankruptcy Case") by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. section 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the Central District of California, San Fernando Valley Division (the "Bankruptcy Court"). Since the commencement of the Bankruptcy Case, Seller has operated the Business and maintained possession of its assets as a debtor and debtor in possession; and

WHEREAS, Seller desires to sell the Purchased Assets (defined below), and Purchaser desires to purchase the Purchased Assets and to assume the Assumed Liabilities (defined below), upon the terms and subject to the conditions set forth herein and pursuant to sections 105, 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the Parties, intending to be legally bound, hereby agree as follows:

#### **ARTICLE I**

#### Definitions.

- Definitions. All capitalized terms not otherwise defined elsewhere in this Agreement shall have the meanings ascribed to such terms in this Section 1.1.
- "Agreement" means this Asset Purchase Agreement, including all Exhibits and Schedules hereto, as it may be amended, modified or supplemented from time to time in accordance with its terms.
  - "Allocation Schedule" has the meaning as ascribed in Section 3.3 of this Agreement.
- "Alternative Transaction" means any sale of the Business or the Purchased Assets to a buyer other than Purchaser.
  - "Assumed Contracts" has the meaning as ascribed in Section 2.1(d) of this Agreement.

- "Assumed Leases" has the meaning as ascribed in Section 2.1(e) of this Agreement.
- "Assumed Liabilities" has the meaning as ascribed in Section 2.3(a) of this Agreement.
- "Assumed Pre-Petition Secured Debt" means any Pre-Petition Loan Document for which (a) the holder of such Pre-Petition Loan Document consents, prior to Closing, to the assumption of such Pre-Petition Loan Document by Purchaser at the Closing, and (b) Purchaser, in its sole discretion, agrees, prior to Closing, to assume such Pre-Petition Loan Document at the Closing. For the avoidance of doubt, at any time and from time to time during the period commencing on the date hereof and terminating at the Closing, Purchaser may provide Seller with an updated list of the Assumed Pre-Petition Secured Debt.
- "Assumed Pre-Petition Secured Debt Amount" has the meaning as ascribed in Section  $\underline{3.1(a)}$  of this Agreement.
- "<u>Auction</u>" means the auction that shall be conducted by Seller before the Bankruptcy Court at the Sale Hearing, unless no overbid is submitted to this Agreement, in which case Seller will seek Bankruptcy Court approval of this Agreement at the Sale Hearing.
  - "Bankruptcy Case" has the meaning as ascribed in the preamble of this Agreement.
  - "Bankruptcy Code" has the meaning as ascribed in the preamble of this Agreement.
  - "Bankruptcy Court" has the meaning as ascribed in the preamble of this Agreement.
- "Bidding Procedures Motion" has the meaning as ascribed in Section 7.2(b) of this Agreement.
- "Bidding Procedures Order" has the meaning as ascribed in Section 7.2(b) of this Agreement.
  - "Break-Up Fee" means an amount equal to \$55,000.
  - "Business" has the meaning as ascribed in the preamble of this Agreement.
- "Business Day" means a day other than a Saturday, a Sunday or a day on which commercial banks are authorized or required to be closed in the State of California.
  - "Cash Bid Amount" has the meaning as ascribed in Section 3.1(a) of this Agreement.
  - "Charges" has the meaning as ascribed in Section 7.9(a) of this Agreement.
  - "Closing" means the consummation of the Transactions.
  - "Closing Date" means the date on which the Closing occurs.
- "Contract" means, with respect to any entity, any legally binding contract, agreement, lease, license, commitment, understanding, right or other instrument or consensual obligation, which pertains to such entity or any material assets of such entity.

"Credit Bid Amount" has the meaning as ascribed in Section 3.1(a) of this Agreement.

"<u>DIP Loan Agreement</u>" means that certain Debtor-in-Possession Credit Agreement, dated as of May 1, 2018, by and between Seller and Purchaser.

"Encumbrances" means, with respect to any property or asset, any mortgage, lien, pledge, charge, claim, encumbrance, security interest, community or other marital property interest, equitable interest, license, option, right of way, easement, encroachment, servitude, right of first offer or first refusal, buy/sell agreement or other encumbrance, including any of the foregoing with respect to the use, construction, voting, transfer, receipt of income or exercise of any other attribute of ownership in respect of such property or asset.

"Escrow Account" has the meaning as ascribed in Section 3.2 of this Agreement.

"Escrow Agent" has the meaning as ascribed in Section 3.2 of this Agreement.

"Excluded Assets" has the meaning as ascribed in Section 2.2 of this Agreement.

"Excluded Liabilities" has the meaning as ascribed in Section 2.3(b) of this Agreement.

"Excluded Pre-Petition Secured Debt" means all Pre-Petition Loan Documents other than the Assumed Pre-Petition Secured Debt.

"Excluded Pre-Petition Secured Debt Amount" means any amount equal to all principal and accrued but unpaid interest under the Excluded Pre-Petition Secured Debt.

"Exit Fee" has the meaning set forth in the DIP Loan Agreement.

"Expense Reimbursement" means an amount equal to the out-of-pocket costs, fees and expenses (including reasonable legal, financial advisory, accounting and other similar costs, fees and expenses) incurred by Purchaser or its affiliates in connection with the negotiation, documentation and implementation of this Agreement and the Transactions.

"Governmental Authority" means the government of the United States or any foreign country or any state or political subdivision thereof and any entity, body, commission or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including quasi-governmental entities established to perform such functions

"Governmental Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

"Intellectual Property" means all worldwide intellectual property and rights, title and interests arising from or in respect of the following: all (a) industrial design registrations and applications therefor, utility models, patents and patent applications (including provisional and Patent Cooperation Treaty applications), including continuations, divisionals, continuations inpart, reexaminations and reissues, extensions, renewals and any patents that may be issued with respect to the foregoing (collectively, "Patents"); (b) trademarks, service marks, certification marks, collective marks, trade names, business names, slogans, acronyms, forms of advertisement, assumed names, d/b/a's, fictitious names, brand names, trade dress, logos, designs, devices, signs,

symbols, design rights including product design, configuration and packaging rights, internet domain names, user names, screen names, Internet and mobile account names (including social media names, "tags," and "handles"), icons, symbols or designations, corporate names, and general intangibles of a like nature and other indicia of identity, origin or quality, whether registered, unregistered or arising by Law, and all applications, registrations, and renewals for any of the foregoing, together with the goodwill associated with and symbolized by each of the foregoing (collectively, "Trademarks"); (c) published and unpublished works of authorship in any medium, whether copyrightable or not, whether in final form or not, in all media now known or hereafter created, including writings, graphics, artworks, photographs, compositions, sound recordings, motion pictures and audiovisual works, databases and other compilations of information, computer software, mobile and internet applications and content, source code, object code, algorithms, and other similar materials, all packaging, advertising and promotional materials related to the products, and all copyrights and moral rights therein and thereto, and registrations and applications therefor, and all issuances, renewals, extensions, restorations and reversions thereof, in each case, whether registered or not (collectively, "Copyrights"); and (d) confidential or proprietary information, inventions and invention disclosures (whether patentable or not and whether or not reduced to practice), improvements, unregistered designs, trade secrets, and know-how, including methods, processes, procedures, business plans, strategy, marketing data, marketing studies, advertisements, schematics, concepts, software and databases (including source code, object code and algorithms), formulae and compositions, drawings, prototypes, models, discoveries, technology, research and development and customer information and lists (collectively, "Trade Secrets"), together with all rights of action and remedies for past, present and future infringement of any of the foregoing Intellectual Property

"Intellectual Property License" means (a) any Contract that contains any grant by any Seller to any third party of any right to use, publish, perform or exploit any of the Intellectual Property of Seller, and (b) any Contract (other than a Contract concerning the licensing of generally commercially available software, including "shrink-wrap" and "click-wrap" licenses) that contains any grant by any third Person to any Seller of any right to use, modify, copy, publish, perform or exploit any Intellectual Property of such third Person concerning or relating to the Business.

"Knowledge of Seller" means the actual knowledge of the directors and officers of Seller, after due inquiry.

"LNBYB" has the meaning as ascribed in Section 3.2 of this Agreement.

"Loan Fee" has the meaning set forth in the DIP Loan Agreement.

"Order" means an order of the Bankruptcy Court or such other court exercising jurisdiction over the Bankruptcy Case.

"Permitted Liens" means (a) Encumbrances for Taxes not yet due and payable or being contested in good faith; (b) landlord and lessor Encumbrances existing under the terms and conditions of leases of real and personal property; (c) Encumbrances on goods in transit incurred pursuant to documentary letters of credit, in each case arising in the ordinary course; and (d) any lien, claim or encumbrance of which Seller, as a debtor under the Bankruptcy Code, could not sell its property free and clear pursuant to section 363(f) of the Bankruptcy Code. For the avoidance of doubt, no warehouse lien shall be considered a Permitted Lien.

"Person" means any natural person, corporation, partnership, limited liability company, joint venture, trust, association or unincorporated entity of any kind.

"Petition Date" has the meaning as ascribed in the preamble of this Agreement.

"Pre-Petition Loan Document" has the meaning set forth in the DIP Loan Agreement.

"Pre-Petition Secured Debt" has the meaning set forth in the DIP Loan Agreement.

"Purchase Price" has the meaning as ascribed in Section 3.1(a) of this Agreement.

"Purchased Assets" has the meaning as ascribed in Section 2.1 of this Agreement.

"Purchased Intellectual Property" means all of the following intellectual property and intellectual property rights owned by Seller: (a) the trademarks listed on Schedule 5.5(a), all other trademarks used in connection with the Business, and any variation of or trademarks formative of any of the foregoing; (b) the System Patent, and all other Patents, Copyrights and Trade Secrets used in connection with the Business; and (c) all rights of action and remedies for past, present and future infringements of any of the foregoing.

"Purchaser" has the meaning as ascribed in the preamble of this Agreement.

"Registered Intellectual Property" has the meaning as ascribed in Section 5.5(a) of this Agreement.

"Sale Hearing" means a hearing on the Sale Motion, expected to be held on June 26, 2018, at 1:30 p.m.

"Sale Motion" has the meaning as ascribed in Section 7.2(c) of this Agreement.

"Sale Order" has the meaning as ascribed in Section 7.2(c) of this Agreement.

"Seller" has the meaning as ascribed in the preamble of this Agreement.

"System Patent" means US Pat #8,038,638.

"Taxes" means all taxes, charges, fees, duties (including custom duties), levies or other assessments, including gross or net income, gross or net receipts, gross or net proceeds, capital gains, profits, gaming, capital, estimated, employment, alternative or add-on minimum, registration, natural resources, premium, ad valorem, turnover, real or personal property (tangible and intangible), sales, goods or services, use, franchise, excise, value added, stamp, unclaimed or abandoned property, leasing, lease, user, transfer, fuel, excess profits, occupational, interest equalization, windfall profits, license, payroll, environmental (including Section 59A of the Code), capital stock, disability, severance, employee's income withholding, other withholding, unemployment and Social Security taxes, which are imposed by any Governmental Authority, and such term shall include any interest, penalties or additions to tax attributable thereto.

"Transactions" means, collectively, the transactions contemplated by this Agreement.

#### **ARTICLE II**

#### Sale and Transfer of Assets.

- 2.1 Purchased Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase, free and clear of all Encumbrances, liens, claims and interests except for the Permitted Liens, the following assets and properties of Seller, other than the Excluded Assets, as the same shall exist on the Closing Date (collectively referred to herein as the "Purchased Assets"):
- all equipment, accessories, machinery, apparatus and furniture owned by Seller, including, but not limited to, the equipment, accessories, machinery, apparatus and furniture identified on Schedule 2.1(a) attached hereto;
- all inventory and supplies owned by Seller, including, but not limited to, the (b) inventory and supplies identified on Schedule 2.1(b);
- to the extent assignable under applicable legal requirements, all permits (c) necessary for or incident to the operation of the Business;
- (d) all of Seller's rights under the Contracts listed or described on Schedule 2.1(d) (the "Assumed Contracts");
- (e) all of Seller's rights under the leases listed or described on Schedule 2.1(e) (the "Assumed Leases");
  - all of Seller's accounts receivable existing at the Closing; (f)
- all of the intangible rights and property of Seller associated with the Business, including Seller's Intellectual Property and all rights with respect thereto (including, specifically, the System Patent and all trade names, Trade Secrets and Trademarks related to the Business and the System Patent), telephone and telecopy listings, websites and domain names, going concern value and goodwill, and including, but not limited to, the Patent and Trademarks identified on Schedule 2.1(g) attached hereto;
- with respect to the Business, all existing documents of sales and service (h) information, customer lists, payor and supplier lists, inventory records, machinery and equipment records, mailing lists, sales and purchasing materials, raw material preparation, operating systems and manufacturing procedures, operating specifications, contract manufacturing specifications and instructions, materials relating to regulatory compliance, employee policy manuals, books of account, customer records, employment and personnel records, purchase orders, correspondence, sales, brochures, advertising materials, samples and display materials;
- all claims of Seller against third parties relating to the Purchased Assets or the Assumed Liabilities, whether choate or inchoate, known or unknown, contingent or noncontingent, but excluding claims relating solely to Excluded Assets; and
- all rights of Seller relating to deposits and prepaid expenses paid by Seller (i) to third parties relating to the Business.

2.2 Excluded Assets. Notwithstanding the provisions of Section 2.1, the Purchased Assets shall not include any of the right, title or interest of Seller in, to and under the following (herein referred to as the "Excluded Assets"): (a) all cash, bank deposits and cash equivalents of Seller; (b) Seller's minute books, stock books and other corporate records having to do with the corporate organization and capitalization of Seller; (c) any Contracts other than Assumed Contracts; (d) any Existing Leases other than Assumed Leases; (e) all of Seller's rights under this Agreement; (f) all insurance policies and claims thereunder of Seller, claims for and rights to receive tax refunds, all tax returns of Seller relating to the Business and any notes, worksheets, files or documents relating thereto, and any legal files or other documents covered by an evidentiary privilege that are not related to the Assumed Liabilities; (g) all rights under any director and officer insurance policies; (h) all of Seller's rights and causes of action against third parties related solely to Excluded Assets; (i) all bankruptcy avoidance causes of action including those arising out of any of Sections 544-553 of the Bankruptcy Code; (j) any customer deposits which are no longer in Seller's possession; (k) any asset of Seller that would constitute a Purchased Asset (if owned by Seller at the Closing) that is conveyed or otherwise disposed of during the period from the date hereof until the Closing either in the ordinary course of business, with the consent of the Bankruptcy Court or as otherwise permitted by the terms of this Agreement; and (1) all of the assets listed on Schedule 2.2 attached hereto.

#### 2.3 Assumed Liabilities; Excluded Liabilities.

- (a) Subject to the terms and conditions of this Agreement, at the Closing, Purchaser shall assume and pay when due only the following obligations and liabilities of Seller (collectively, the "Assumed Liabilities"): (i) liabilities of Seller under the Assumed Contracts arising after the Closing Date; (ii) liabilities of Seller under the Assumed Leases arising after the Closing Date; (iii) liabilities of Seller under the Assumed Pre-Petition Secured Debt, and (iv) those liabilities specifically identified in Schedule 2.3(a) hereto.
- (b) Notwithstanding anything to the contrary set forth herein, Purchaser will not assume and will be deemed not to have assumed, and Seller will remain liable with respect to, any and all obligations and liabilities of Seller, whether or not relating to the Business or the Purchased Assets, at any time existing or asserted, whether or not accrued, fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Seller, other than the Assumed Liabilities, (collectively, the "Excluded Liabilities"). Purchaser will not be obligated to assume, and does not assume, and hereby disclaims all of the Excluded Liabilities.

#### 2.4 Assumption and Assignment of Contracts.

- (a) The Sale Order (or a separate Bankruptcy Court Order) shall provide that, as of the Closing, Seller shall (i) assume the Assumed Contracts and the Assumed Leases in the Bankruptcy Case and (ii) assign the Assumed Contracts and the Assumed Leases to Purchaser free and clear of all Encumbrances, liens, claims and interests except for the Permitted Liens and obligations arising under the Assumed Contracts and the Assumed Leases after the Closing Date.
- (b) Notwithstanding anything to the contrary herein, this Agreement shall not constitute an agreement to assign or transfer any interest in any Assumed Contract or Assumed Lease or any claim or right arising thereunder if such assignment or transfer cannot occur under

the Bankruptcy Code without the approval of a third party. In the event any such required approval is not obtained prior to the Closing, Seller shall continue to use its commercially reasonable efforts to cooperate with Purchaser to obtain any such required approval after the Closing.

#### **ARTICLE III**

#### **Purchase Price**.

#### 3.1 The Purchase Price.

- (a) The purchase price to be paid by Purchaser for the Purchased Assets (the "Purchase Price") shall be \$1,290,000, consisting of (i) an amount equal to and payable in the form of a credit bid of the full amount of the obligations outstanding under the DIP Loan Agreement, including, but not limited to, all outstanding principal, accrued but unpaid interest, the Loan Fee and the Exit Fee (the "Credit Bid Amount"); (ii) the assumption by Purchaser of the Assumed Pre-Petition Secured Debt, if any (the aggregate amount of all principal, accrued but unpaid interest, and any other fees or obligations outstanding with respect thereto as of the Closing Date, the "Assumed Pre-Petition Secured Debt Amount"); (iii) an amount in cash equal to the Excluded Pre-Petition Secured Debt Amount, and (iv) an amount in cash equal to the difference of (A) \$1,290,000, minus, (B) the sum of (1) the Credit Bid Amount, plus (2) the Assumed Pre-Petition Secured Debt Amount, plus (3) the Excluded Pre-Petition Secured Debt Amount (the "Cash Bid Amount"); provided, however, that, subject to Section 3.1(b), in no event will the sum of (I) the Excluded Pre-Petition Secured Debt Amount, plus (II) the Cash Bid Amount exceed \$651,834.
- (b) At any time, and from time to time, during the Auction, Purchaser may increase the Purchase Price by paying additional cash consideration.
- 3.2 <u>Payment of the Purchase Price</u>. The Purchase Price shall be paid by Seller as follows: at the Closing, Purchaser shall (i) pay the Excluded Pre-Petition Secured Debt Amount directly to the applicable holders thereof, and (ii) deposit the Cash Bid Amount into an escrow account (the "<u>Escrow Account</u>") established by Seller's bankruptcy counsel, Levene, Neale, Bender, Yoo & Brill L.L.P. ("<u>LNBYB</u>"), which shall serve as escrow agent ("<u>Escrow Agent</u>"). Escrow Agent shall not disburse any of the Cash Bid Amount except in accordance with an entered Order.
- 3.3 <u>Allocation of the Purchase Price</u>. The parties hereto agree to the allocation of the Purchase Price among the Purchased Assets as indicated on <u>Schedule 3.3</u> attached hereto for tax reporting purposes (the "<u>Allocation Schedule</u>"). Seller and Purchaser shall report, act and file all tax returns in all respects and for all purposes consistent with the Allocation Schedule (as such Allocation Schedule may be adjusted). Neither Purchaser nor Seller shall file any tax returns in a manner that is inconsistent with such allocation.

#### ARTICLE IV

#### Closing.

4.1 <u>Closing</u>. The Closing shall be consummated at 10:00 a.m., local time, at the offices of LNBYB, 10250 Constellation Blvd., Suite 1700, Los Angeles, California 90067 within five days after the Sale Order has been entered; provided, that all conditions set forth in <u>Article VIII</u>

- 4.2 <u>Closing Actions and Deliveries</u>. All actions to be taken and all documents to be executed and delivered in connection with the consummation of the Transactions shall be reasonably satisfactory in form and substance to the Parties and their respective counsel. All actions to be taken and all documents to be executed and delivered by the Parties at the Closing shall be deemed to have been taken and executed simultaneously, and no action shall be deemed taken nor any document executed and delivered until all have been taken, executed and delivered.
- 4.3 <u>Seller's Closing Deliveries</u>. Subject to the fulfillment or waiver of the conditions set forth in <u>Article IX</u>, at the Closing, Seller shall deliver to Purchaser the following:
- (a) The Purchased Assets, it being understood that any records, manuals, materials or other documents included in the Purchased Assets shall be provided in both hard copy and electronic copy form;
- (b) Any lease assignment agreements related to the Assumed Leases prepared by Purchaser and delivered to Seller, duly executed by Seller;
- (c) Any Contract assignment agreements related to the Assumed Contracts prepared by Purchaser and delivered to Seller, duly executed by Seller;
- (d) A bill of sale prepared by Purchaser and delivered to Seller, duly executed by Seller;
- (e) such other bills of sale, assignments and other instruments of transfer or conveyance, duly executed by Seller, as may be reasonably requested by Purchaser and prepared by Purchaser and delivered to Seller to effectuate the sale, conveyance and delivery of the Purchased Assets to Purchaser;
  - (f) a certified copy of the Sale Order;
- (g) a certificate executed by an executive officer of Seller certifying as to the matters set forth in <u>Section 8.3</u> and <u>Section 8.4</u>; and
- (h) a certificate, duly completed and executed by Seller pursuant to Section 1.1445-2(b)(2) of the Treasury Regulations promulgated under the Code, certifying that Seller is not a "foreign person" within the meaning of Section 1445 of the Code.
- 4.4 <u>Purchaser's Closing Deliveries</u>. Subject to the fulfillment or waiver of the conditions set forth in <u>Article VIII</u>, at the Closing, Purchaser shall (i) deliver to Escrow Agent (in the manner set forth in <u>Section 3.2</u>) the Cash Bid Amount by wire transfer of immediately available funds; (ii) execute and deliver to the respective secured creditors, all assumption documents related to the Assumed Pre-Petition Secured Debt, and (iii) pay the Excluded Pre-Petition Secured Debt Amount directly to the applicable holders thereof.

#### Representations and Warranties of Seller.

**ARTICLE V** 

Seller hereby makes the following representations and warranties to Purchaser as of the date hereof and as of the Closing Date:

- 5.1 <u>Due Authorization</u>. Subject to the entry of the Sale Order or other requirements of the Bankruptcy Court, this Agreement, and all other agreements, certificates and documents executed or to be executed in connection herewith, constitute or, when executed and delivered, shall constitute a legal, valid and binding Contract of Seller, enforceable against Seller in accordance with its terms.
- 5.2 <u>Ordinary Course</u>. From the date of this Agreement through the Closing, Seller will operate the Business only in the ordinary course of business.

#### 5.3 <u>Title to Assets; Condition.</u>

- (a) Seller has good and marketable title to all of the Purchased Assets, and, pursuant to the terms of the Sale Order, shall deliver title to the Purchased Assets to Purchaser at the Closing free and clear of all Encumbrances, liens, claims and interests except for the Permitted Liens, which Permitted Liens shall remain liens against the Purchased Assets in the same manner as such Permitted Liens existed immediately prior to the Closing. Subject to entry of the Sale Order, Purchaser will be vested with title to the Purchased Assets, free and clear of all Encumbrances, liens, claims and interests, except for the Permitted Liens, to the fullest extent permissible under Section 363(f) of the Bankruptcy Code.
- (b) The Purchased Assets will be delivered to Purchaser at the Closing on an "AS IS" "WHERE IS" basis with no representation or warranty as to the condition or working order of the Purchased Assets.
- 5.4 <u>No Brokers</u>. Except as set forth in <u>Schedule 5.4</u>, neither this Agreement nor the sale of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of, or representing Seller as broker, finder, investment banker, financial advisor or in any similar capacity.

#### 5.5 Intellectual Property.

- (a) Schedule 5.5(a) sets forth (i) a complete list of all Purchased Intellectual Property that is registered or for which an application for registration has been filed (including, where applicable, the title, application or registration number and jurisdiction) (the "Registered Intellectual Property"); (ii) a complete list of all material unregistered trademarks, copyrights, or patents included in the Purchased Intellectual Property; and (iii) a complete list all domain name registrations included in the Purchased Intellectual Property.
- (b) <u>Schedule 5.5(b)</u> sets forth a complete list of all material written Intellectual Property Licenses, whether such Intellectual Property Licenses involve payments by or to Seller.

- (c) The Purchased Intellectual Property constitutes all of the Intellectual Property used in the operation of the Business. Except as set forth on <u>Schedule 5.5(c)</u>:
  - (i) Seller owns all Purchased Intellectual Property listed on <u>Schedule 5.5(a)</u> and has valid rights in and to, including all rights to use, reproduce, publish, distribute, transmit, perform, display, and create derivative works of, as applicable, all such Purchased Intellectual Property as such Intellectual Property is used in the ordinary course of business, which in each case, following the Closing, shall be free and clear of all Encumbrances, liens, claims and interests except for the Permitted Liens. To the Knowledge of Seller, the Registered Intellectual Property is enforceable and subsisting.
  - (ii) To the Knowledge of Seller, the Purchased Intellectual Property is not the subject of any ownership, validity, use, or enforceability challenge or claim or any outstanding Governmental Order restricting the use by Seller thereof or adversely affecting any of the rights of Seller thereto.
  - (iii) Seller is not, and to the Knowledge of Seller, no other Person is, in breach or default under any Intellectual Property License material to the operation of the Business that is an Assumed Contract and to which Seller is a party or by which it is bound, except for breaches or defaults that would not, individually or in the aggregate, be material. To the Knowledge of Seller, no Person is violating, diluting, misappropriating or infringing, or has, in the last three (3) years, violated, diluted, misappropriated or infringed, any Purchased Intellectual Property or Intellectual Property exclusively licensed to Seller under an Intellectual Property License that is an Assumed Contract, except for violations, dilutions, misappropriations or infringement that would not, individually or in the aggregate, be material.
  - (iv) Seller has made reasonable efforts to protect and maintain the proprietary nature of each item of Purchased Intellectual Property and the confidentiality of the confidential Trade Secrets and other confidential information of the Business.
  - (v) To the Knowledge of Seller, (A) Seller is not violating, diluting, misappropriating or infringing, and the Purchased Intellectual Property does not violate, dilute, misappropriate or infringe, and in the last three (3) years Seller has not violated, diluted, misappropriated or infringed, any Intellectual Property rights of any other Person and (B) there are no legal proceedings, pending or, to the Knowledge of Seller, threatened, concerning any claim that Seller has infringed, diluted, misappropriated, or otherwise violated any Intellectual Property rights of any other Person.

#### ARTICLE VI

#### Representations and Warranties of Purchaser.

Purchaser hereby makes the following representations and warranties to Seller as of the date hereof and as of the Closing Date:

6.1 <u>Due Authorization</u>. Subject to the entry of the Sale Order or other requirements of the Bankruptcy Court, this Agreement, and all other agreements, certificates and documents executed or to be executed in connection herewith, constitute or, when executed and delivered,

shall constitute a legal, valid and binding Contract of Purchaser, enforceable against Purchaser in accordance with its terms.

- 6.3 <u>No Financing Contingency</u>. Purchaser currently has (and at the Closing will have) sufficient funds available to it to enable Purchaser to consummate the Transactions and to pay the entire amount of the Purchase Price to Seller or as otherwise set forth in this Agreement. Purchaser's ability to consummate the Transactions and to pay the entire amount of the Purchase Price to Seller or as otherwise set forth in this Agreement is therefore not subject to any financing contingency.
- 6.5 Adequate Assurances Regarding Assumed Contracts and Assumed Leases. Purchaser is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts and Assumed Leases. Purchaser shall coordinate with Seller in respect of any filings with the Bankruptcy Court or delivery of information to other parties to Assumed Contracts and Assumed Leases to assist Seller to obtain an Order approving of Seller's assumption and assignment to Purchaser of the Assumed Contracts and Assumed Leases.

#### **ARTICLE VII**

### **Covenants and Agreements**

7.1 <u>Purchaser's Investigation</u>. Purchaser acknowledges that it has had adequate time and opportunity to conduct all of its due diligence prior to the Auction or Sale Hearing if there is no overbid and neither needs nor has any right to any further investigation or due diligence once the Auction or Sale Hearing if there is no overbid commences.

#### 7.2 Bankruptcy Matters; Bidding Process; Expense Reimbursement.

- (a) Seller and Purchaser acknowledge that this Agreement and the Transactions are subject to Bankruptcy Court approval. Seller and Purchaser acknowledge that (i) to obtain such Bankruptcy Court approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer possible for the Purchased Assets, including, but not limited to, giving notice of the Transactions to creditors and certain other interested parties as ordered by the Bankruptcy Court, and conducting an Auction, if appropriate, of the Purchased Assets, and (ii) Seller must cure all defaults and Purchaser must provide adequate assurance of future performance with respect to the Assumed Contracts and Assumed Leases.
- (b) On June 4, 2018, Seller shall file with the Bankruptcy Court a motion (the "<u>Bidding Procedures Motion</u>") in form and substance reasonably satisfactory to Purchaser, seeking the Bankruptcy Court's entry of an Order (i) approving bidding procedures consistent with the terms of this Agreement and in a form acceptable to Purchaser (the "<u>Bidding Procedures Order</u>"): (ii) approving the Break-Up Fee and Expense Reimbursement; and (iii) scheduling the Auction and the Sale Hearing.
- (c) On June 5, 2018, Seller will file with the Bankruptcy Court a motion, in form and substance reasonably satisfactory to Purchaser (the "Sale Motion"), seeking the Bankruptcy Court's entry of an Order approving the sale of the Purchased Assets to Purchaser (the "Sale Order"). The Sale Order shall, among other things,:

- (i) authorize Seller's sale of the Purchased Assets to Purchaser free and clear of all Encumbrances, liens, claims and interests except for the Permitted Liens under and pursuant to section 363(f) of the Bankruptcy Code in accordance with the terms of this Agreement; and
- (ii) authorize the assumption by Seller and assignment to Purchaser of the Assumed Contracts and Assumed Leases as of the Closing Date, and otherwise in accordance with the terms of this Agreement.
- 7.3 Operations of the Business Prior to the Closing. From the date of this Agreement through the Closing Date, Seller shall operate the Business in the ordinary course of business. Without limiting the generality of the foregoing, Seller:
- (a) shall not, without the prior written consent of Purchaser, purchase, sell, lease, mortgage, pledge or otherwise acquire or dispose of any Purchased Assets;
- (b) shall not, without the prior written consent of Purchaser, waive, release or cancel in any respect any claims against third parties or debts owing to them, or any rights which have any material value, in each case, with respect to any Purchased Assets, other than related solely to Excluded Liabilities;
- (c) shall not, without the prior written consent of Purchaser, change, amend, terminate or otherwise modify in any respect, any Assumed Contract or Assumed Lease;
- (d) shall make all post-bankruptcy payments and otherwise perform all post-bankruptcy material obligations in respect of all Assumed Leases and ongoing regulatory compliance matters so as to prevent any loss or forfeiture thereof or thereunder, except, in any case, where the enforcement of non-compliance is stayed by the Bankruptcy Case;
- (e) shall, with the exception of any defaults existing as of the date of this Agreement, perform and observe all the terms and provisions of each Assumed Contract to be performed or observed by it, maintain each such Assumed Contract in full force and effect, enforce each such Assumed Contract in accordance with its terms, take all such action to such end as may be from time to time requested by Purchaser and, upon request of Purchaser, make to each other party to each such Assumed Contract such demands and requests for information and reports or for action Seller is entitled to make under such Assumed Contract except, in any case, where the enforcement of non-compliance is stayed by the Bankruptcy Case; and
  - (f) shall abide by the budget approved by the Bankruptcy Court in all respects.
- 7.4 <u>Purchaser's Cooperation with Seller's Sale Efforts.</u> Purchaser shall promptly take all actions as are reasonably requested by Seller to assist Seller to obtain the Bankruptcy Court's entry of the Sale Order, including furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and making Purchaser's representatives available to testify before the Bankruptcy Court.
- 7.5 <u>Adequate Assurances Regarding Assumed Contracts and Assumed Leases</u>. With respect to each Assumed Contract and each Assumed Lease, Purchaser shall use commercially reasonable efforts to provide adequate assurance as required under the Bankruptcy Code of the

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future performance by Purchaser of each such Assumed Contract and Assumed Lease. Seller shall promptly take all commercially reasonable actions required, and Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller and are reasonably necessary or appropriate to assist Seller, to obtain a Bankruptcy Court finding that all defaults have been cured and there has been a demonstration of adequate assurance of future performance under the Assumed Contracts and Assumed Leases, such as furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and making the respective representatives of Purchaser and Seller available to testify before the Bankruptcy Court as necessary.

#### 7.6 Satisfaction of Closing Conditions.

- Seller and Purchaser shall, and shall cause their respective representatives (a) to, use commercially reasonable efforts to take all of the actions necessary to consummate the Transactions in accordance with the terms of the Sale Order and will cooperate with the other Party for such purpose.
- Seller agrees to immediately notify Purchaser of any event, fact or (b) circumstance of which Seller becomes aware that could reasonably be expected to result in the failure of a condition set forth in Article VIII or IX to be satisfied and, if such condition is curable, to allow Purchaser a reasonable opportunity to satisfy such condition.
- Purchaser agrees to immediately notify Seller of any event, fact or (c) circumstance of which Purchaser becomes aware that could reasonably be expected to result in the failure of a condition set forth in Article VIII or IX to be satisfied and, if such condition is curable, to allow Seller a reasonable opportunity to satisfy such condition.

#### 7.7 Employee Matters.

- Purchaser shall have the right (in its sole and absolute discretion), but not the obligation, to offer employment, effective as of the Closing, to any or all employees, officers and/or directors of Seller. In no event shall Purchaser be obligated to hire or retain any employee, officer and/or director of Seller for any period following the Closing. Purchaser is authorized to communicate with the employees, officers and directors of Seller for the purpose of negotiating and extending offers of employment to such employees, officers and/or directors as Purchaser determines. Purchaser shall provide Seller with a written list of those employees, officers and/or directors that Purchaser intends to offer employment at least five (5) Business Days prior to the Closing.
- Except as expressly provided in this Agreement, nothing herein shall be (b) construed as transferring to Purchaser (i) any Contract with any current or former employee, officer or director of Seller or for the employment of any person or engagement of any independent contractor by Seller or (ii) any rights or obligations Seller may owe to or be owed by any current or former employee, officer, director, consultant, independent contractor or agent of Seller. For the avoidance of doubt, Seller shall be solely responsible, and Purchaser shall have no obligations whatsoever, for any salary, wages, bonuses, accrued vacations or paid time off, or other similar amounts payable to any current or former employee, officer, director, independent contractor, or

consultant of Seller, or any of their eligible dependents, for any period relating to service with Seller prior to the Closing.

- (c) The provisions of this <u>Section 7.7</u> shall inure solely to the benefit of the Parties, and nothing herein, express or implied, is intended to confer upon any other Person (including any employee, officer or director of Seller) any rights or remedies of any nature (including any third-party beneficiary rights under this Agreement) whatsoever.
- 7.8 <u>Cure Amounts</u>. Seller shall pay all of the costs required to be paid pursuant to Bankruptcy Code Section 365(b) to cure any default on the part of Seller under Assumed Contracts and Assumed Leases to enable Seller to assume and assign the Assumed Contracts and Assumed Leases to Purchaser.

#### 7.9 Prorations; Tax Cooperation.

- (a) Personal property, ad valorem, use and intangible taxes and assessments, common area maintenance charges, utility charges and rental payments with respect to the Purchased Assets and the Assumed Contracts and Assumed Leases (collectively, "Charges") shall be prorated on a per diem basis and apportioned on a calendar year basis between Seller and Purchaser as of the Closing Date. Seller shall be liable for that portion of such Charges relating to, or arising in respect of, periods on or prior to the Closing Date, and Purchaser shall be liable for that portion of such Charges relating to, or arising in respect of, any period after the Closing Date.
- (b) Purchaser and Seller shall cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing and preparation of tax returns related to the Purchased Assets and any tax proceeding related thereto.
- 7.10 Seller's Cooperation with Purchaser's Assumption of Pre-Petition Secured Debt. The parties acknowledge and agree that Purchaser may determine to assume any or all of the Pre-Petition Loan Documents at the Closing, if agreed to by the Purchaser and the applicable holder(s) thereof. Seller shall promptly take all actions as are reasonably requested by Purchaser to assist Purchaser in obtaining the consent of any such holders identified by Purchaser, including, but not limited to, initiating, coordinating and/or otherwise facilitating discussions regarding such assumption.

#### **ARTICLE VIII**

#### **Conditions to Performance by Purchaser.**

The obligations of Purchaser to consummate the Closing is subject to the fulfillment of each of the following conditions:

- 8.1 <u>Bankruptcy Court Order</u>. The Bankruptcy Court shall have entered the Sale Order by June 29, 2018.
  - 8.2 Deliveries. Seller shall have made all of the deliveries required by Section 4.3.
- 8.3 <u>Bring-down of Seller Representations and Warranties</u>. Each of the representations and warranties of Seller contained in this Agreement will be true and correct in all material respects

at and as of the Closing, in each case, other than representations and warranties that expressly speak only as of a specific date or time, which will be true and correct as of such specified date or time. Seller will have performed and complied in all material respects with all covenants contained in this Agreement that are required to be performed or complied with by Seller at or prior to the Closing.

- 8.4 <u>Condition of Assets.</u> From the date of this Agreement through the Closing, there shall have been no material adverse change in the condition of the Purchased Assets prior to Closing other than changes related to the conduct of the sale process contemplated by this Agreement and/or the Sale Order, with the Bankruptcy Court to be the final arbiter of whether there has been any such material adverse change if Seller and Purchaser are not in agreement.
- 8.5 <u>Pending Actions</u>. No proceeding by any Governmental Authority shall be pending on the Closing Date with respect to which a court of competent jurisdiction over Seller has entered an order that enjoins the consummation of this Agreement or the Transactions.
- 8.6 <u>Assumption of Pre-Petition Secured Debt</u>. Seller shall have obtained consent to Purchaser's assumption of any Assumed Pre-Petition Secured Debt from the applicable holder(s) thereof, recognizing that Purchaser's assumption of any existing pre-petition secured debt is not a condition of the Closing.

#### **ARTICLE IX**

### **Conditions to Performance by Seller.**

The obligations of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions:

- 9.1 <u>Bankruptcy Court Order</u>. The Bankruptcy Court shall have entered the Sale Order by June 29, 2018.
  - 9.2 <u>Deliveries</u>. Purchaser shall have made all of the deliveries required by <u>Section 4.4</u>.

#### **ARTICLE X**

#### Termination.

- 10.1 <u>Termination</u>. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Closing:
  - (a) by the mutual written consent of Purchaser and Seller;
- (b) by Purchaser, in the event of the dismissal of the Bankruptcy Case or conversion of the Bankruptcy Case to a proceeding under Chapter 7 of the Bankruptcy Code, or the appointment of a trustee under Chapter 11 of the Bankruptcy Code;
- (c) automatically, in the event the Bankruptcy Court approves an Alternative Transaction or an Alternative Transaction is consummated by Seller, subject to Purchaser's right to payment of the Break-Up Fee and Expense Reimbursement in accordance with Section 10.4;

- (d) by Purchaser, if any representation or warranty made herein for the benefit of Purchaser is untrue in any material respect, or Seller shall have defaulted in any material respect in the performance of any obligation under this Agreement.
- (e) by Purchaser, if the Sale Order has not been entered by the Bankruptcy Court on or before June 29, 2018; provided, that no Party may terminate this Agreement pursuant to this Section 10.1(e) if such Party's breach of this Agreement or failure to fulfill any obligation under this Agreement shall have been a principal cause of the failure of the Closing to be consummated.
- 10.2 <u>Notice of Termination</u>; <u>Effect of Termination</u>. The Party desiring to terminate this Agreement pursuant to <u>Section 10.1</u> shall give written notice of such termination to the other Party specifying the provision or provisions hereof pursuant to which such termination is effected.
- 10.3 <u>Return of Documentation</u>. Following termination of this Agreement, Purchaser shall return or destroy (and provide written proof of such destruction of) all agreements, documents, contracts, instruments, books, records, materials and other information (in any format) regarding Seller or the Business provided to Purchaser or its representatives in connection with the Transactions contemplated hereunder other than as reasonably necessary or advisable to enforce its rights under this Agreement.

#### 10.4 Termination Fees.

- If (i) this Agreement is terminated pursuant to Section 10.1(b), Section (a) 10.1(c), Section 10.1(d), or Section 10.1(e), and (ii) an Alternative Transaction is consummated, then Seller will pay to Purchaser in cash the Break-Up Fee and the Expense Reimbursement. The Break-Up Fee and the Expense Reimbursement shall be paid in cash concurrently with the consummation and closing (which, in the case of a plan of reorganization or liquidation, shall be the effectiveness thereof) of the first Alternative Transaction to occur simultaneously with or following the termination of this Agreement and shall be paid from the first proceeds of such Alternative Transaction prior to payment of any other claims including claims secured by the assets that are the subject of the Alternative Transaction, until the Break-Up Fee and the Expense Reimbursement are paid in full. For the avoidance of doubt, nothing in the preceding sentence shall limit Purchaser's recourse with respect to the Break-Up Fee or the Expense Reimbursement to the proceeds described therein, and the Break-Up Fee and the Expense Reimbursement will constitute, pursuant to Sections 364 and 503 of the Bankruptcy Code, superpriority administrative expense claims in the Bankruptcy Case and in any successor bankruptcy case of any Chapter 7 proceeding following conversion of the Bankruptcy Case with priority over any and all administrative expense claims. Any Break-Up Fee and the Expense Reimbursement payable pursuant to this Agreement will be allowed and paid, without any further Bankruptcy Court approval or Order. Seller will not qualify any bid to participate in the Auction that does not include, at a minimum, a cash consideration sufficient to pay (A) the Expense Reimbursement, (B) the Break-Up Fee, and (C) the full amount of the obligations outstanding under the DIP Loan Agreement, including, but not limited to, all outstanding principal, accrued but unpaid interest, the Loan Fee and the Exit Fee.
- (b) Seller acknowledges that (i) the agreements contained in this <u>Section 10.4</u> are an integral part of the Transactions, (ii) the damages resulting from termination of this

Agreement under circumstances where the Break-Up Fee and the Expense Reimbursement are payable are uncertain and incapable of accurate calculation and, therefore, the amount payable pursuant to this Section 10.4 is not a penalty but rather constitutes liquidated damages in a reasonable amount that will compensate Purchaser for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, and (iii) without the agreements contained in this Section 10.4, the Parties would not have entered into this Agreement.

(c) Notwithstanding anything to the contrary contained herein, the rights of Purchaser under this Section 10.4 are independent of and in addition to such rights and remedies of Purchaser under Section 12.11; provided, that Purchaser may simultaneously pursue (i) a grant of specific performance pursuant to Section 12.11 and (ii) payment of the Break-Up Fee and the Expense Reimbursement pursuant this Section 10.4, but may not receive both a grant of specific performance pursuant to Section 12.11 that results in the Closing and payment of the Break-Up Fee and the Expense Reimbursement pursuant to this Section 10.4.

#### **ARTICLE XI**

#### **Termination of Representation, Warranties and Covenants.**

Termination of Representations, Warranties and Covenants. All representations and warranties contained in this Agreement shall terminate upon the Closing. None of the covenants or other agreements contained in this Agreement shall survive the Closing other than those which by their terms contemplate performance after the Closing, and each such surviving covenant or agreement shall survive the Closing for the period contemplated by its terms.

#### **ARTICLE XII**

#### **General Provisions.**

- Expenses. Whether or not the Transactions contemplated herein are consummated, except as otherwise expressly provided herein, the parties hereto shall pay their own respective expenses incident to the preparation of this Agreement and to the consummation of the Transactions. All transfer, documentary, sales, use, stamp, registrations and other such Taxes and fees applicable to, imposed upon, or arising out of the Transactions shall be borne by Seller.
- 12.2 Entire Agreement; No Third Party Beneficiaries; Amendment. This Agreement, together with the Exhibits and Schedules hereto, embodies all of the representations, warranties and agreements of the parties hereto with respect to the subject matter hereof, and all prior understandings, representations and warranties (whether oral or written) with respect to such matters are superseded. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person other than the Parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may not be amended, modified, waived, discharged or orally terminated except by an instrument in writing signed by the Party or a duly authorized officer of a Party against whom enforcement of the change, waiver, discharge or termination is sought.

- 12.3 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted; provided that the Parties will amend this Agreement to most closely implement the intent of this Agreement.
- Waiver. Either Party may, by written notice to the other Party, waive any provision of this Agreement from which such Party is entitled to receive a benefit. The waiver by either Party of a breach by the other Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by such other Party of such provision or any other provision of this Agreement.
- Successors and Assigns. This Agreement shall not be assignable by either Party without the prior written consent of the other Party; provided, however, Purchaser may, upon written notice to Seller, assign this Agreement in whole or in part to any affiliate of Purchaser, provided that such assignment shall not relieve Purchaser of its obligations hereunder. This Agreement shall be binding upon, and shall inure to the benefit of, and be enforceable by, the Parties and their respective legal representatives, successors and assigns.
- Notice. All notices or other communications required or permitted hereunder shall be in writing and shall be delivered personally or sent by registered or certified mail, by reputable overnight delivery or courier or by electronic mail, addressed as follows:

To Seller: Hemolife Medical, Inc.

c/o Troy Barring, CEO

21550 Oxnard Street, Suite 300 Woodland Hills, CA 91367

Email: tbarring@hemolifemedical.com

With a copy to (which shall not constitute notice):

Levene, Neale, Bender, Yoo & Brill L.L.P. 10250 Constellation Boulevard, Suite 1700

Los Angeles, CA 90067

Email: RB@LNBYB.COM; LLS@LNBYB.COM Attn: Ron Bender, Esq./Lindsey L. Smith, Esq.

To Purchaser: Clarrence AG

> Bahnhofstrasse 20 CH-6300 Zug Switzerland

Attention: Director

Email: info@clarrence.ch

With a copy to (which shall

not constitute notice):

Stubbs Alderton & Markiles, LLP 15260 Ventura Boulevard, 20th Floor

Sherman Oaks, CA 91403

Email: gakselrud@stubbsalderton.com

Attn: Greg Akselrud, Esq.

and in any case at such other address as the Parties shall have specified by written notice to the other. Notice of change of address shall be effective only upon receipt thereof. All such other notices and communications shall be deemed effective (a) if by personal delivery, upon receipt, (b) if by registered or certified mail, on the fifth Business Day after the date of mailing thereof, (c) if by reputable overnight delivery or courier, on the first Business Day after the date of mailing or (d) if by electronic mail, on the first Business Day after the date that the e-mail was sent; recognizing that regardless of the method of delivery used, all notices must also be provided by email.

- 12.7 <u>Section Headings; Counterparts; Facsimile Signatures</u>. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. The exchange of executed copies of this Agreement by facsimile transmission or other electronic transmission shall constitute effective execution and delivery of this Agreement.
- 12.8 <u>Governing Law</u>. The laws of the State of California (without giving effect to its conflicts of law principles) and, to the extent applicable, the Bankruptcy Code, govern this Agreement and all matters arising out of or relating to this Agreement and any of the Transactions contemplated hereby, including its negotiation, execution, validity, interpretation, construction, performance and enforcement.
- 12.9 <u>Jurisdiction</u>. During the pendency of the Bankruptcy Case, any proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against either of the Parties in the Bankruptcy Court, and both of the Parties consent to the jurisdiction of the Bankruptcy Court (and the appropriate appellate courts) in any such action or proceeding and waive any objection to venue laid therein. At any time following the pendency of the Bankruptcy Case, the Parties hereby irrevocably submit to the exclusive jurisdiction of federal and state courts located in Los Angeles County, California over any action or proceeding arising out of or relating to this Agreement or any of the Transactions contemplated hereby and each Party hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such courts. The Parties hereby irrevocably waive any objection which it may now or hereafter have to the laying of venue of any action or proceeding brought in such court or any claim that such action or proceeding brought in such court has been brought in an inconvenient forum. Both of the Parties agree that a judgment in such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
- 12.10 <u>Interpretation</u>. The use of the masculine, feminine or neuter gender or the singular or plural form of words used herein (including defined terms) shall not limit any provision of this Agreement. The terms "include," "includes" and "including" are not intended to be limiting and shall be deemed to be followed by the words "without limitation" (whether or not they are in fact followed by such words) or words of like import. The term "or" has the inclusive meaning represented by the phrase "and/or." Reference to a particular party includes such party's successors and assigns to the extent such successors and assigns are permitted by the terms of this Agreement. Reference to a particular agreement (including this Agreement), document or

instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. The terms "dollars" and "\$" mean United States Dollars. The Exhibits and Schedules identified in this Agreement are incorporated into this Agreement by reference and made a part hereof. The Article, Section, paragraph and Exhibit headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References to Articles, Sections, paragraphs, clauses, Exhibits or Schedules shall refer to those portions of this Agreement unless the context requires otherwise. The use of the terms "hereunder," "hereof," "hereto" and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section, paragraph or clause of, or Exhibit or Schedule to, this Agreement.

### 12.11 <u>Injunctive Relief</u>.

- (a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, either Party will be entitled to seek injunctive relief to prevent any such breach, and to seek to specifically enforce the terms and provisions of this Agreement, including, without limitation, to seek specific performance of such covenants, promises or agreements or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 12.11 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.
- (b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Seller, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Seller, as applicable, under this Agreement all in accordance with the terms of this Section 12.11.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement as of the day and year first above written.

CLARRENCE AG		
By:		
Name:		
Its:		
HEMOLIFE MEDICAL, INC.		
By:		
Name:		
Its:		

# Schedule 2.1(a)

## Manufacturing equipment to rinse, process and assemble the HLM 100

- Atlas Vac Machine
- Ace Glassware System
- Conspec Controls- Sprint Tester
- Lewa Pumps/Di-System
- Dispensing Drum Truck
- Safety Explosion Proof Cabinet
- 2 Refrigerators
- Frian Industries-Heat Sealer
- Pfc Equipment, Inc Tubing
- Including additional components and spare part related to the above machinery

# **Non-Manufacturing equipment**

- 2 CRRT (Continuous Renal Replacement Therapy) Machines
- Miscellaneous Lab Equipment

# Schedule 2.1(b)

# **Inventory & Supplies for Manufacturing HLM 100**

Remaining Inventory of below items

- Blister Tray HLM 100
- Carbon
- Expired Hemolife Impact Kits
- Header Nut P2000 Blue
- Header Nut P2000 Red
- Header Port Cap Vented
- I.M.P.A.C.T. System Box Labels
- Impact System HLM 100 Adsorption Column
- Master Carton HLM 100
- Molded Case
- Resin 1
- Resin 2
- Tray Lid Zone Coat HLM
- Unit Box HLM 100

Starting inventory balance in data room, as of April 23, 2018

#### Schedule 2.1(c)

## Applicable legal requirements, all permits necessary for or incident to the operation of the **Business**

Alex Padilla California Secretary of State



# Q Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed through Sunday, April 15, 2018. Please refer to document Processing Times for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

#### C2470134 HEMOLIFE MEDICAL, INC.

10/08/2002 Registration Date: Jurisdiction: DELAWARE FOREIGN STOCK **Entity Type:** ACTIVE Agent for Service of Process: TROY BARRING

21550 OXNARD STREET SUITE 300

WOODLAND HILL CA 91367 **Entity Address:** 21550 OXNARD STREET SUITE 300 WOODLAND HILL CA 91367 Entity Mailing Address: 21550 OXNARD STREET SUITE 300 WOODLAND HILL CA 91367

A Statement of Information is due EVERY year beginning five months before and through the end of October.

Document Type 🚺	File Date	PDF
SI-COMPLETE	04/05/2018	Image unavailable. Please request paper copy.
SI-COMPLETE	12/07/2009	
REGISTRATION	10/08/2002	

<sup>\*</sup> Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code section 2114 for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to Name Availability.
- If the image is not available online, for information on ordering a copy refer to Information Requests.
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to **Information Requests**.
- . For help with searching an entity name, refer to Search Tips.
- . For descriptions of the various fields and status types, refer to Frequently Asked Questions

**Modify Search** 

**New Search** 

**Back to Search Results** 

# Schedule 2.1(d)

# **Assumed Contracts**

- InnOpath distribution agreement dated April 30, 2015
- Elite Custom Solutions Manufacturing Agreement dated \_\_\_\_\_\_\_
- Life Science Outsourcing Manufacturing Proposal dated April 25, 2018
- BSI Group America Inc, ISO CE Mark Agreement dated May 1, 2018
- Caron and Associates Contract

# Schedule 2.1(e)

# **Assumed Leases -Offices**

- Woodland Hills Office: 21550 Oxnard Street, 3<sup>rd</sup> Floor, Woodland Hills CA 91367
  - o Month to Month, 60 days notice to vacate
- Storage Unit: 32992 Valle Road San Juan Capistrano CA 92675
  - o Month to Month

# Schedule 2.1(g)

### **Patents**

- US Granted Patent # 8,038,638 "Plasma detoxification and volume control system and methods of use" issued October 18, 2011
- EP1765433B1
- WO2005082504A3
- WO2005082504A2
- EP1765433A1

# **Trademarks**

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	86490155		INNOVATIVE EXTRACTIVE THERAPY	TSDR	DEAD
2	86403759		HEMOLIFE MEDICAL, INC.	TSDR	DEAD
3	86490391	4743768	HEMOLIFE MEDICAL	TSDR	LIVE
4	85167593	3989195	IMPACT SYSTEM	TSDR	LIVE
5	78381145		I.M.P.A.C.T. SYSTEM	TSDR	DEAD

# Schedule 2.2

# **Excluded Assets**

• None

# Schedule 2.3 (a)

# **Assumed Liabilities**

• None

# Schedule 3.3

# **Purchased asset Allocation**

• Fixed assets (machinery/equipment) \$124,154.09

• Inventory \$125,000.00

• Patents \$TBD

Trademarks \$ TBD

Case 1:18-bk-11009-MB		Filed 06/05/18 ocument Page	Entered 06/05/18 17:15:08 42 of 42	Desc
1	PROOF	OF SERVICE	OF DOCUMENT	

1	PROOF OF SERVICE OF DOCUMENT
2	I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067
3	A true and correct copy of <b>Notice of Sale of Estate Property</b> will be served or was served <b>(a)</b> on the judge in chambers in the form and manner required by LBR 5005-2(d); and <b>(b)</b> in the manner stated below:
<ul><li>5</li><li>6</li><li>7</li></ul>	1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On June 5, 2018, I checked the CM/ECF docket for this bankruptcy case of adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:
8 9 10	Ron Bender on behalf of Debtor Hemolife Medical, Inc. rb@Inbyb.com  S Margaux Ross on behalf of U.S. Trustee United States Trustee (SV) margaux.ross@usdoj.gov
11 12 13	Lindsey L Smith on behalf of Debtor Hemolife Medical, Inc.  Ils@Inbyb.com, Ils@ecf.inforuptcy.com  United States Trustee (SV) ustpregion16.wh.ecf@usdoj.gov      Service information continued on attached page
14 15 16	2. SERVED BY UNITED STATES MAIL: On June 5, 2018, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.
17   18   19	Courtesy Copy Hon. Martin R. Barash United States Bankruptcy Court 21041 Burbank Boulevard, Chambers 342 Woodland Hills, CA 91367 United States Trustee S Margaux Ross 915 Wilshire Blvd, Suite 1850 Los Angeles, CA 90017
20 21 22 23	3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, June 5, 2018, I served the following persons and/or entities by personal delivery, overnight mail service or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to the judge will be completed no later than 24 hours after the document is filed.
24 25	☐ Service information continued on attached page  I declare under penalty of perjury under the laws of the United States of America that the foregoing is
26 27	true and correct.  June 5, 2018  John Berwick  Zignature  John Berwick  Signature
28	